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the plan administrator's finding, it will so notify the plan administrator in writing, and the distribution notice will remain in effect.

(c) *Subsequent insufficiency for benefit liabilities.* When a plan administrator finds that a plan is sufficient for guaranteed benefits but is no longer sufficient for benefit liabilities, the plan administrator must immediately notify the PBGC in writing of this fact, but must continue with the distribution of assets in accordance with § 4041.50.

(d) *Finding by PBGC of subsequent insufficiency.* In any case in which the PBGC finds on its own initiative that a subsequent insufficiency for guaranteed benefits has occurred, paragraph (b)(1) of this section will apply, except that the guaranteed benefits must be revalued as of the date of the PBGC's finding.

(e) *Restrictions upon finding of subsequent insufficiency.* When the plan administrator makes the finding described in paragraph (b) of this section or receives notice that the PBGC has made the finding described in paragraph (d) of this section, the plan administrator is (except to the extent the PBGC otherwise directs) subject to the prohibitions in § 4041.42.

§ 4041.50 Closeout of plan.

If a plan administrator receives a distribution notice from the PBGC pursuant to § 4041.47 and neither the plan administrator nor the PBGC makes the finding described in § 4041.49(b) or (d), the plan administrator must distribute plan assets in accordance with § 4041.28 and file a post-distribution certification in accordance with § 4041.29, except that—

(a) The term “plan benefits” is replaced with “title IV benefits”;

(b) For purposes of applying the distribution deadline in § 4041.28(a)(1)(i), the phrase “after the expiration of the PBGC's 60-day (or extended) review period under § 4041.26(a)” is replaced with “the day on which the plan administrator completes the issuance of the notices of benefit distribution pursuant to § 4041.48(a)”; and

(c) For purposes of applying the distribution deadline in § 4041.28(a)(1)(ii), the phrase “the requirements of

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§ 4041.25(c)” is replaced with “the requirements of § 4041.48(d)”.

PART 4041A—TERMINATION OF MULTIEMPLOYER PLANS

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AUTHORITY: 29 U.S.C. 1302(b)(3), 1341a, 1441.

SOURCE: 61 FR 34052, July 1, 1996, unless otherwise noted.

Subpart A—General Provisions

§ 4041A.1 Purpose and scope.

The purpose of this part is to establish rules for notifying the PBGC of the termination of a multiemployer plan and rules for the administration of multiemployer plans that have terminated by mass withdrawal. Subpart B prescribes the contents of and procedures for filing a Notice of Termination for a multiemployer plan. Subpart C prescribes basic duties of plan sponsors of mass-withdrawal-terminated plans. (Other duties are prescribed in part 4281 of this chapter.) Subpart D contains procedures for closing out sufficient plans. This part applies to terminated multiemployer plans covered by title IV of ERISA but,

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in the case of subparts C and D, only to plans terminated by mass withdrawal under section 4041A(a)(2) of ERISA (including plans created by partition pursuant to section 4233 of ERISA).

§ 4041A.2 Definitions.

The following terms are defined in § 4001.1 of this chapter: annuity, ERISA, insurer, IRS, mass withdrawal, multi-employer plan, nonforfeitable benefit, PBGC, plan, and plan year.

In addition, for purposes of this part: *Available resources* means, for a plan year, available resources as described in section 4245(b)(3) of ERISA.

Benefits subject to reduction means those benefits accrued under plan amendments (or plans) adopted after March 26, 1980, or under collective bargaining agreements entered into after March 26, 1980, that are not eligible for the PBGC's guarantee under section 4022A(b) of ERISA.

Financial assistance means financial assistance from the PBGC under section 4261 of ERISA.

Insolvency benefit level means the greater of the resource benefit level or the benefit level guaranteed by the PBGC for each participant and beneficiary in pay status.

Insolvency year means insolvency year as described in section 4245(b)(4) of ERISA.

Insolvent means that a plan is unable to pay benefits when due during the plan year. A plan terminated by mass withdrawal is not insolvent unless it has been amended to eliminate all benefits that are subject to reduction under section 4281(c) of ERISA, or, in the absence of an amendment, no benefits under the plan are subject to reduction under section 4281(c) of ERISA.

Nonguaranteed benefits means those benefits that are eligible for the PBGC's guarantee under section 4022A(b) of ERISA, but exceed the guarantee limits under section 4022A(c).

Resource benefit level means resource benefit level as described in section 4245(b)(2) of ERISA.

[61 FR 34052, July 1, 1996; 61 FR 36626, July 12, 1996]

§ 4041A.3 Submission of documents.

(a) *Filing date.* Any notice, document, or information required to be filed with

the PBGC under this part shall be deemed filed on the date of the postmark stamped on the cover in which the notice, document, or information is mailed, provided that the postmark was made by the United States Postal Service and the document was mailed postage prepaid, properly packaged and addressed to the PBGC. If these conditions are not met, the document is considered filed on the date it is received by the PBGC. Documents received after regular business hours are considered filed on the next regular business day.

(b) *Address.* Any notice, document, or information required to be filed with the PBGC under this part shall be sent by mail or submitted by hand during normal working hours to Reports Processing, Insurance Operations Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005-4026.

Subpart B—Notice of Termination

§ 4041A.11 Requirement of notice.

(a) *General.* A Notice of Termination shall be filed with the PBGC by a multiemployer plan when the plan has terminated as described in section 4041A(a) of ERISA.

(b) *Who shall file.* The plan sponsor or a duly authorized representative acting on behalf of the plan sponsor shall sign and file the Notice.

(c) *When to file.* (1) For a termination pursuant to a plan amendment, the Notice shall be filed with the PBGC within thirty days after the amendment is adopted or effective, whichever is later.

(2) For a termination that results from a mass withdrawal, the Notice shall be filed with the PBGC within thirty days after the last employer withdrew from the plan or thirty days after the first day of the first plan year for which no employer contributions were required under the plan, whichever is earlier.

(Approved by the Office of Management and Budget under control number 1212-0020)

§ 4041A.12 Contents of notice.

(a) *Information to be contained in notice.* Except to the extent provided in paragraph (d), each Notice shall contain:

- (1) The name of the plan;
- (2) The name, address and telephone number of the plan sponsor and of the plan sponsor's duly authorized representative, if any;
- (3) The name, address, and telephone number of the person that will administer the plan after the date of termination, if other than the plan sponsor;
- (4) A copy of the plan's most recent Form 5500 (Annual Report Form), including schedules; and
- (5) The date of termination of the plan.

(b) *Information to be contained in a notice involving a mass withdrawal.* In addition to the information contained in paragraph (a) and except as provided in paragraph (d), the following information shall be contained in a Notice filed by a plan that has terminated by mass withdrawal:

- (1) A copy of the plan document in effect 5 years prior to the date of termination and copies of any amendments adopted after that date.
- (2) A copy (or copies) of the trust agreement (or agreements), if any, authorizing the plan sponsor to control and manage the operation and administration of the plan.
- (3) A copy of the most recent actuarial statement and opinion (if any) relating to the plan.
- (4) A statement of any material change in the assets or liabilities of the plan occurring after either the date of the actuarial statement referred to in item (5) or the date of the plan's Form 5500 submitted as part of the Notice.
- (5) Complete copies of any letters of determination issued by the IRS relating to the establishment of the plan, any letters of determination relating to the disqualification of the plan and any subsequent requalification, and any letters of determination relating to the termination of the plan.
- (6) A statement whether the plan assets will be sufficient to pay all benefits in pay status during the 12-month period following the date of termination.
- (7) If plan assets on hand are sufficient to satisfy all nonforfeitable benefits under the plan, and if the plan sponsor intends to distribute such assets, a brief description of the proposed method of distributing the plan assets.

(8) If plan assets on hand are not sufficient to satisfy all nonforfeitable benefits under the plan, the name and address of any employer who contributed to the plan within 3 plan years prior to the date of termination.

(c) *Certification.* As part of the Notice, the plan sponsor or duly authorized representatives shall certify that all information and documents submitted pursuant to this section are true and correct to the best of the plan sponsor's or representative's knowledge and belief.

(d) *Avoiding duplication.* Information described in paragraphs (a) and (b) of this section need not be supplied if it duplicates information contained in Form 5500, or a schedule thereof, that a plan submits as part of the Notice.

(e) *Additional information.* In addition to the information described in paragraphs (a) and (b) of this section, the PBGC may require the submission of any other information which the PBGC determines is necessary for review of a Notice of Termination.

Subpart C—Plan Sponsor Duties

§ 4041A.21 General rule.

The plan sponsor of a multiemployer plan that terminates by mass withdrawal shall continue to administer the plan in accordance with applicable statutory provisions, regulations, and plan provisions until a trustee is appointed under section 4042 of ERISA or until plan assets are distributed in accordance with subpart D of this part. In addition, the plan sponsor shall be responsible for the specific duties described in this subpart.

§ 4041A.22 Payment of benefits.

(a) Except as provided in paragraph (b), the plan sponsor shall pay any benefit attributable to employer contributions, other than a death benefit, only in the form of an annuity.

(b) The plan sponsor may pay a benefit in a form other than an annuity if—

- (1) The plan distributes plan assets in accordance with subpart D of this part;
- (2) The PBGC approves the payment of the benefit in an alternative form pursuant to § 4041A.27; or

(3) The value of the entire nonforfeitable benefit does not exceed \$1,750.

(c) Except to the extent provided in the next sentence, the plan sponsor shall not pay benefits in excess of the amount that is nonforfeitable under the plan as of the date of termination, unless authorized to do so by the PBGC pursuant to § 4041A.27. Subject to the restriction stated in paragraph (d) of this section, however, the plan sponsor may pay a qualified preretirement survivor annuity with respect to a participant who died after the date of termination.

(d) The payment of benefits subject to reduction shall be discontinued to the extent provided in § 4281.31 if the plan sponsor determines, in accordance with § 4041A.24, that the plan's assets are insufficient to provide all nonforfeitable benefits.

(e) The plan sponsor shall, to the extent provided in § 4281.41, suspend the payment of nonguaranteed benefits if the plan sponsor determines, in accordance with § 4041A.25, that the plan is insolvent.

(f) The plan sponsor shall, to the extent required by § 4281.42, make retroactive payments of suspended benefits if it determines under that section that the level of the plan's available resources requires such payments.

§ 4041A.23 Imposition and collection of withdrawal liability.

Until plan assets are distributed in accordance with subpart D of this part, or until the end of the plan year as of which the PBGC determines that plan assets (exclusive of claims for withdrawal liability) are sufficient to satisfy all nonforfeitable benefits under the plan, the plan sponsor shall be responsible for determining, imposing and collecting withdrawal liability (including the liability arising as a result of the mass withdrawal), in accordance with part 4219, subpart C, of this chapter and sections 4201 through 4225 of ERISA.

§ 4041A.24 Annual plan valuations and monitoring.

(a) *Annual valuation.* Not later than 150 days after the end of the plan year, the plan sponsor shall determine or cause to be determined in writing the

value of nonforfeitable benefits under the plan and the value of the plan's assets, in accordance with part 4281, subpart B. This valuation shall be done as of the end of the plan year in which the plan terminates and each plan year thereafter (exclusive of a plan year for which the plan receives financial assistance from the PBGC under section 4261 of ERISA) up to but not including the plan year in which the plan is closed out in accordance with subpart D of this part.

(b) *Plan monitoring.* Upon receipt of the annual valuation described in paragraph (a) of this section, the plan sponsor shall determine whether the value of nonforfeitable benefits exceeds the value of the plan's assets, including claims for withdrawal liability owed to the plan. When benefits do exceed assets, the plan sponsor shall—

(1) If the plan provides benefits subject to reduction, amend the plan to reduce those benefits in accordance with the procedures in part 4281, subpart C, of this chapter to the extent necessary to ensure that the plan's assets are sufficient to discharge when due all of the plan's obligations with respect to nonforfeitable benefits; or

(2) If the plan provides no benefits subject to reduction, make periodic determinations of plan solvency in accordance with § 4041A.25.

(c) *Notices of benefit reductions.* The plan sponsor of a plan that has been amended to reduce benefits shall provide participants and beneficiaries and the PBGC notice of the benefit reduction in accordance with § 4281.32.

§ 4041A.25 Periodic determinations of plan solvency.

(a) *Annual insolvency determination.* The plan sponsor of a plan that has been amended to eliminate all benefits that are subject to reduction under section 4281(c) of ERISA shall determine in writing whether the plan is expected to be insolvent for the first plan year beginning after the effective date of the amendment and for each plan year thereafter. In the event that a plan adopts more than one amendment reducing benefits under section 4281(c) of ERISA, the initial determination shall be made for the first plan year beginning after the effective date of the

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amendment that effects the elimination of all such benefits, and a determination shall be made for each plan year thereafter. The plan sponsor of a plan under which no benefits are subject to reduction under section 4281(c) of ERISA as of the date the plan terminated shall determine in writing whether the plan is expected to be insolvent. The initial determination shall be made for the second plan year beginning after the first plan year for which it is determined under section 4281(b) of ERISA that the value of nonforfeitable benefits under the plan exceeds the value of the plan's assets. The plan sponsor shall also make a solvency determination for each plan year thereafter. A determination required under this paragraph shall be made no later than six months before the beginning of the plan year to which it applies.

(b) *Other determination of insolvency.* Whether or not a prior determination of plan solvency has been made under paragraph (a) of this section (or under section 4245 of ERISA), a plan sponsor that has reason to believe, taking into account the plan's recent and anticipated financial experience, that the plan is or may be insolvent for the current or next plan year shall determine in writing whether the plan is expected to be insolvent for that plan year.

(c) *Benefit suspensions.* If the plan sponsor determines that the plan is, or is expected to be, insolvent for a plan year, it shall suspend benefits in accordance with § 4281.41.

(d) *Insolvency notices.* If the plan sponsor determines that the plan is, or is expected to be, insolvent for a plan year, it shall issue notices of insolvency or annual updates and notices of insolvency benefit level of the PBGC and to plan participants and beneficiaries in accordance with part 4281, subpart D.

§ 4041A.26 Financial assistance.

A plan sponsor that determines a resource benefit level under section 4245(b)(2) of ERISA that is below the level of guaranteed benefits or that determines that the plan will be unable to pay guaranteed benefits for any month during an insolvency year shall

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apply for financial assistance from the PBGC in accordance with § 4281.47.

§ 4041A.27 PBGC approval to pay benefits not otherwise permitted.

Upon written application by the plan sponsor, the PBGC may authorize the plan to pay benefits other than nonforfeitable benefits or to pay benefits valued at more than \$1,750 in a form other than an annuity. The PBGC will approve such payments if it determines that the plan sponsor has demonstrated that the payments are not adverse to the interests of the plan's participants and beneficiaries generally and do not unreasonably increase the PBGC's risk of loss with respect to the plan.

Subpart D—Closeout of Sufficient Plans

§ 4041A.41 General rule.

If a plan's assets, excluding any claim of the plan for unpaid withdrawal liability, are sufficient to satisfy all obligations for nonforfeitable benefits provided under the plan, the plan sponsor may close out the plan in accordance with this subpart by distributing plan assets in full satisfaction of all nonforfeitable benefits under the plan.

§ 4041A.42 Method of distribution.

The plan sponsor shall distribute plan assets by purchasing from an insurer contracts to provide all benefits required by § 4041A.43 to be provided in annuity form and by paying in a lump sum (or other alternative elected by the participant) all other benefits.

§ 4041A.43 Benefit forms.

(a) *General rule.* Except as provided in paragraph (b) of this section, the sponsor of a plan that is closed out shall provide for the payment of any benefit attributable to employer contributions only in the form of an annuity.

(b) *Exceptions.* The plan sponsor may pay a benefit attributable to employer contributions in a form other than an annuity if:

(1) The present value of the participant's entire nonforfeitable benefit, determined using the interest assumption

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under §§ 4044.41 through 4044.57, does not exceed \$5,000.

(2) The payment is for death benefits provided under the plan.

(3) The participant elects an alternative form of distribution under paragraph (c) of this section.

(c) *Alternative forms of distribution.* The plan sponsor may allow participants to elect alternative forms of distribution in accordance with this paragraph. When a form of distribution is offered as an alternative to the normal form, the plan sponsor shall notify each participant, in writing, of the form and estimated amount of the participant's normal form of distribution. The notification shall also describe any risks attendant to the alternative form. Participants' elections of alternative forms shall be in writing.

[61 FR 34052, July 1, 1996, as amended at 63 FR 38306, July 16, 1998]

§ 4041A.44 Cessation of withdrawal liability.

The obligation of an employer to make payments of initial withdrawal liability and mass withdrawal liability shall cease on the date on which the plan's assets are distributed in full satisfaction of all nonforfeitable benefits provided by the plan.

PART 4043—REPORTABLE EVENTS AND CERTAIN OTHER NOTIFICATION REQUIREMENTS

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- 4043.20 Post-Event filing obligation.
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- 4043.61 Advance reporting filing obligation.
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- 4043.67 Loan default.
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Subpart D—Notice of Failure To Make Required Contributions

- 4043.81 PBGC Form 200, notice of failure to make required contributions; supplementary information.

AUTHORITY: 29 U.S.C. 1082(f), 1302(b)(3), 1343.

SOURCE: 61 FR 63989, Dec. 2, 1996, unless otherwise noted.

Subpart A—General Provisions

§ 4043.1 Purpose and scope.

This part prescribes the requirements for notifying the PBGC of a reportable event under section 4043 of ERISA or of a failure to make certain required contributions under section 302(f)(4) of ERISA or section 412(n)(4) of the Code. Subpart A contains definitions and general rules. Subpart B contains rules for post-event notice of a reportable event. Subpart C contains rules for advance notice of a reportable event. Subpart D contains rules for notifying the PBGC of a failure to make certain required contributions.